

## REMARKS

This Amendment is submitted in response to the non-final Office Action mailed on February 21, 2006. A petition for a one month extension of time is submitted herewith. The Director is authorized to charge \$120 for the petition for extension of time and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-486 on the account statement.

Claims 1-17 are pending in this application. In the Office Action, the specification is objected to, Claims 1-2, 5, 8 and 10-11 are rejected under 35 U.S.C. §102 and Claims 3-4, 6-7, 9 and 12-17 are rejected under 35 U.S.C. §103. In response Claims 1 and 12 have been amended and Claim 2 has been canceled. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, the specification has been objected to. In response, Applicants have amended the specification to address the informalities cited by the Patent Office. Accordingly, Applicants respectfully request that the objection to the specification be withdrawn.

In the Office Action, Claims 1-2, 5, 8 and 10-11 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,012,533 to Jonas et al. ("*Jonas*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Independent Claim 1 has been amended to recite, in part, a beverage foaming milk product that has at least two emulsifiers selected from the group consisting of propylene glycol monostearate, sorbitan tristearate, unsaturated monoglyceride and combinations thereof, and wherein the foam stabilizer is selected from the group consisting of a sodium alginate, a mixture of microcrystalline cellulose and carboxymethylcellulose and combinations thereof. This amendment as discussed above is fully supported in the specification, for example, on page 1, lines 20-25 and page 2, lines 5-23. In contrast, Applicants respectfully submit that *Jonas* fails to disclose or suggest every element of the present claims as currently amended.

The present invention is directed, in part, to providing a specific beverage foaming milk product that represents a new and innovative solution, for example, trying to afford a milk based foamed composition that remains stable for a while once poured or deposited onto the surface of a beverage, especially a hot beverage like coffee, tea or chocolate and that acts simultaneously as

beverage whitener/foamer. Applicants have surprisingly found that foamability at room temperature can be achieved by means of duly selected emulsifiers which belong to distinct categories or chemical classes, i.e. propylene glycol saturated fatty acid esters, sorbitan saturated fatty acid esters and unsaturated monoglycerides. Foam stability (once the foam is poured onto the beverage surface) can be achieved by means of duly selected foam stabilizers, namely a combination of microcrystalline cellulose (MCC) and carbomethoxycellulose (CMC) or sodium alginate. A whitening action (from the foaming) can be achieved by the progressive release of milk ingredients like caseinates (e.g. non-fat milk solids) from the foam and by the progressive migration of the emulsion into the liquid phase as well.

*Jonas* fails to disclose or suggest any beverage foaming milk product as required, in part, by Claim 1. In contrast, *Jonas* is directed to a multipurpose whipped dessert which may be consumed in the frozen state as an ice-cream type product or alternatively in the thawed state as a whipped topping. See, *Jonas*, column 1, lines 5-13. *Jonas* teaches its essential feature being to provide a whipped food composition which is "freeze-thaw stable" such that it may be alternatively consumed as an ice-cream or as a whipped topping and may be refrozen between consumptions. See, *Jonas*, column 2, lines 14-39.

When discussing consumption of an ice-cream type product, *Jonas* neither teaches nor suggests a beverage foaming milk product (e.g. as coffee whitener/foamer) in accordance with Claim 1. When referring to the use of the thawed form as whipped dessert, *Jonas* teaches that the "dessert product is resistant to syneresis and/or foam collapse in the foamed condition and its foam structure is of sufficient strength that while in the thawed state various fruits, flavoured syrups... and the like may be blended into the dessert..." This fails to disclose or suggest a product that is a beverage foaming milk product.

For at least the reasons discussed above, Applicants respectfully submit that independent Claim 1 and Claims 2, 5, 8 and 10-11 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited reference.

Accordingly, Applicants respectfully request that the rejection of Claims 1-2, 5, 8 and 10-11 under 35 U.S.C. §102 be withdrawn.

Claims 3-4, 6-7, 9, 15 and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jonas* in view of U.S. Patent No. 6,033,711 to Gonsalves et al. ("*Gonsalves*"), U.S. Patent No. 3,230,091 to Thompson ("*Thompson*") and U.S. Patent No. 5,759,609 to Lynch ("*Lynch*").

Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claims 3-4, 6-7, 9, 15 and 17 that depend from Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claims 3-4, 6-7, 9, 15 and 17 in combination with the novel elements of Claim 1.

In the Office Action, Claims 12-14 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Jonas* in view of *Gonsalves*, *Thompson* and *Lynch*. Applicants believe this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Independent Claim 12 has been amended to recite, in part, a method regarding a beverage foaming milk product having a foam stabilizer selected from the group consisting of a sodium alginate, a mixture of microcrystalline cellulose and carboxymethylcellulose and combinations thereof. This amendment as discussed above is fully supported in the specification, for example, on page 1, lines 20-25 and page 2, lines 5-23. In contrast, Applicants respectfully submit that all of the claimed elements are not taught or suggested by the cited references.

As discussed previously, *Jonas* fails to disclose or suggest a beverage foaming milk product or any methods regarding same as required, in part, by Claim 12. *Jonas* provides no teaching or guidance as to how its product can be used as a beverage whitener/foamer in accordance with the present claims. Applicants also respectfully submit that *Gonsalves*, *Thompson* and *Lynch* fail to remedy the deficiencies of *Jonas*.

*Gonsalves* is directed to a fat-free/low-fat frozen whipped topping, preferably a non-dairy, frozen whipped topping which be freeze-thawed stable and which will retain a stable foam structure and texture for a while, in fact around 3 weeks, during storage. See, *Gonzalves*, column 1, lines 10-15. *Gonsalves* also teaches essentially a non-dairy food product, which teaches away from the present claims directed, in part, to a beverage foaming milk product. Moreover, there is no teaching or guidance in *Gonsalves* regarding making a beverage foaming milk product in accordance with Claim 12. As a result, one having ordinary skill would not be motivated to combine *Gonzalves* with *Jonas* to arrive at the present claims.

*Thompson* is directed to a whipped topping used to top desserts. See, *Thompson*, column 1, lines 8-10. *Lynch* is directed to a low-fat whipped topping, more specifically to a dairy-free non-fat whipped topping food product that can be stored frozen in an unwhipped state for an indefinite period of time, thawed and whipped into a whipped dessert, which explicitly teaches away from Claim 12. See, *Lynch*, column 2, lines 8-10. Moreover, *Thompson* and *Lynch* fail to

disclose or suggest a beverage foaming milk product or methods of making same as required, in part, by Claim 12. In fact, there is no teaching or guidance that the compositions of *Thompson* and *Lynch* could be used for a beverage foaming milk product in accordance with Claim 12. As a result, one having ordinary skill would not be motivated to combine *Thompson* and *Lynch* with *Jonas* and *Gonsalves* to arrive at the present claims.

For at least the reasons discussed above, the combination of *Jonas* in view of *Gonsalves*, *Thompson* and *Lynch* do not teach, suggest, or even disclose all of the elements of the present claims, and thus, fail to render the claimed subject matter obvious.


Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 3-4, 6-7, 9 and 12-17 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY



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Robert M. Barrett  
Reg. No. 30,142  
Customer No.: 29157

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